

## ***REMARKS***

By this paper, claims 1-9, 14, 16, 23-26, 28-31, 35-38, 40, 41, 44, 49, 51, 58-61, 63, 64, 66-72, 74, 102, 103, 108, 109, and 116-126 are amended, and no claims are added or cancelled. Accordingly, claims 1-134 and 136-156 are all of the pending claims. Claims 11-13, 17-22, 48, 52-57, 82, 83, 99, 101, 113, 114, 130, 132, and 154-156 have been withdrawn from examination. Support for the amendments presented above is provided throughout the specification and claims as originally filed. Applicants expressly reserve the right to prosecute the subject matter of the unamended and/or cancelled claims, or any other subject matter supported by the Specification, in one or more continuation applications. In view of the foregoing amendments and the following remarks, reconsideration and allowance of all the pending claims is anticipated.

### ***Election/Restriction***

Claims 154-156 have been restricted, and elected by original presentation, as allegedly being drawn to an invention independent from the claimed invention of the claims currently under examination, and as allegedly placing an undue burden on the Examiner. Applicants traverse the restriction of claims 154-156 at least because the examination of claims 154-156 along with the claims currently under examination would not place an undue burden on the Examiner.

### ***Claim Rejections – 35 USC § 103***

Claims 1-10, 14-16, 23-45, 49-51, 58-81, 84-98, 100, 102-112, 115-129, 131, 133, 134, and 136-146 currently stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,803,500 to Mossberg ("Mossberg") in view of U.S. Patent No. 5,909,673 to Gregory ("Gregory"), in further view of U.S. Patent No. 5,903,874 to Leonard *et al.* ("Leonard"), and in still further view of U.S. Patent No. 5,845,265 to Woolston ("Woolston"); and claims 149-153 currently stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Mossberg in view of Gregory,

in further view of Leonard, in still further view of Woolston, and in yet still further view of U.S. Patent No. 6,112,181 to Shear *et al.* (“Shear”). Without acknowledging the propriety of these rejections, Applicants have amended the claims to further clarify various aspects of the claimed invention.

*Claims 1-10, 14-16, And 23-35.*

The proposed combination of references does not teach or suggest, among other things, the auctioning of “*dining incentives*” as recited in claim 1. As amended, claim 1 recites *inter alia* the following features, which are not taught by the proposed combination of references:

*A computer implemented method of using a web-site for reducing excess capacity during non-peak demand periods for a **restaurant that experiences periods of peak demand and periods of non-peak demand**... comprising...:*

*...enabling one or more restaurants to post on the web-site **dining incentives for auction**, the dining incentives comprising a first dining incentive... [being] **redeemable for service from the restaurant offering the first dining incentive during the non-peak demand period for a discount from a predetermined price, subject to the restrictions, and non-winners and non-purchasers pay the predetermined price without the discount during the non-peak demand period.***

The Office Action alleges that Mossberg “discloses an auction item or multiple similar auction items which can include a certificate entitling the bearer to specific goods or services or invitations to dinner (e.g., invitation to a restaurant) (see at least, col. 3, lines 57-61)” [p. 4]. The cited section of Mossberg states, in pertinent part, “[f]urther, more than one unit of certain auction items may be made available for sale, such as a set of invitations to a dinner” [c. 3, ll. 61-63]. This is the primary reference cited in the Office Action with respect to the auctioning of items such as the “*dining incentives*” recited in claim 1.

Mossberg does not support the interpretation propounded in the Office Action. The passage cited by the Examiner does not describe a “*dining incentive* [] *redeemable*

*for [] service from the restaurant offering the [] dining incentive... for a discount from a predetermined price..., and non-winners and non-purchasers pay the predetermined price.”* Instead, the cited section of Mossberg only teaches auctioning “invitations to dinner”. There is no indication that the auctioned “invitations” are redeemable at a restaurant (as opposed to a private home or gathering), and/or that such redemption results in “*a discount from a predetermined price..., and non-winners and non-purchasers pay the predetermined price.*” Instead, the cited section of Mossberg seems merely to teach auctioning invitations that will provide admittance at a particular dinner.

None of the other references address this deficiency of Mossberg by teaching or suggesting the auctioning of “*dining incentives*” as recited in claim 1. Therefore, the proposed combination of references fails to teach or suggest the features of claim 1 reproduced above. For at least this reason the rejection of claim 1 should be withdrawn.

Claims 2-10, 14-16, and 23-35 depend from claim 1. As such, the rejection of claims 2-10, 14-16, and 23-35 should be withdrawn due to the dependency of these claims, as well as for the features that they recite individually.

*Claims 36-45, 49-51, And 58-70.*

The combination of references cited in the Office Action do not teach or suggest a system configured to auction “*dining incentives*” as recited in independent claim 36. For example, claim 36 recites *inter alia* the following features, which are not taught or suggested by the cited references:

A... system... providing a web-site for reducing excess capacity during non-peak demand periods for a **restaurant that experiences periods of peak demand and periods of non-peak demand**, the system comprising:

...a restaurant module configured to enable one or more restaurants to post on the web-site **dining incentives for auction**, the dining incentives comprising a first dining incentive... [being] **redeemable for service from the restaurant offering the first dining incentive during the non-peak demand period at a discount from a predetermined price, subject to the restrictions, and non-winners and non-purchasers pay the predetermined**

***price without the discount during the non-peak demand period.***

At least for the reasons presented above, the proposed combination of references does not teach or suggest the auctioning of “*dining incentives*”, much less a system configured to auction such “*dining incentives*” on a web-site. For at least this reason, the rejection of claim 36 should be withdrawn.

Claims 37-45, 49-51, and 58-70 depend from claim 36. As such, the rejection of claims 37-45, 49-51, and 58-70 should be withdrawn due to the dependency of these claims, as well as for the features that they recite individually.

***Claims 71-81, 84-98, And 100.***

The combination of references cited in the Office Action do not teach or suggest a method involving auctioning “*certificates*” as recited in independent claim 71. For example, claim 71 recites *inter alia* the following features, which are not taught or suggested by the proposed combination of references:

***A computer implemented method for reducing excess capacity during non-peak demand periods for a service business that experiences periods of peak demand and periods of non-peak demand for a service that is offered at a predetermined price, the method comprising the steps of:***

***...providing a web site for enabling one or more businesses to post offers to auction certificates including a first certificate, the first certificate... being redeemable for service from the corresponding business during the non-peak demand period for the predetermined value, subject to the restrictions, and non-winning bidders and non-purchasers pay a price without receiving credit for the predetermined value of the first certificate during the non-peak demand period.***

As was discussed above with respect to claim 1, the cited sections of Mossberg relied on in the Office Action, at most, only teaches the auctioning off of an invitation to an event, such as a specific dinner. There is no teaching or suggestion of auctioning a certificate having a “*predetermined value*” that is “*redeemable... during [a] non-peak demand period... [where] non-winning bidders and non-purchasers pay a price without*

*receiving credit for the predetermined value of the first certificate during the non-peak demand period.”* Instead, the cited portion of Mossberg only teaches the auction of the aforementioned invitation. The cited portions of the other references relied on in the Office Action do not address this deficiency of Mossberg by teaching the auction of a “*certificate*”. For at least this reason, the rejection of claim 71 should be withdrawn.

Claims 72-81, 84-98, and 100 depend from claim 71. As such, the rejection of claims 72-81, 84-98, and 100 should be withdrawn due to the dependency of these claims, as well as for the features that they recite individually.

*Claims 102-112, 115-129, And 131.*

The combination of references cited in the Office Action do not teach or suggest a system configured to auction “*dining incentives*” as recited in independent claim 102. For example, claim 102 recites *inter alia* the following features, which are not taught or suggested by the proposed combination of references:

*A... system... for providing a web site for **reducing unused capacity for one or more restaurants** during non-peak demand periods, where the one or more restaurants experience periods of peak demands and periods of non-peak demands, the system comprising:*

*...an auction posting module configured to enable one or more restaurants to post on the web site offers to auction dining incentives comprising a first dining incentive, the first dining incentive... **being redeemable for service from the corresponding restaurant during the non-peak demand period for a discount from a predetermined price corresponding to the predetermined value, subject to the restrictions, and non-winners and non-purchasers pay the predetermined price without the discount during the non-peak demand period....***

At least for the reasons presented above with respect to claim 1, the proposed combination of references does not teach or suggest the auctioning of “*dining incentives*”, much less a system configured to auction such “*dining incentives*” on a web-site. For at least this reason, the rejection of claim 102 should be withdrawn.

Claims 103-112, 115-129, and 131 depend from claim 102. As such, the

rejection of claims 103-112, 115-129, and 131 should be withdrawn due to the dependency of these claims, as well as for the features that they recite individually.

*Claims 133, 134, And 136-152.*

The combination of references cited in the Office Action do not teach or suggest a method involving the sale (much less the auction) of “*gift certificates*” for restaurants as recited in independent claim 133. For example, claim 133 recites *inter alia* the following features, which are not taught or suggested by the proposed combination of references:

*A computer implemented method of using a web site for **reducing excess capacity during non-peak demand periods for restaurants** that experience periods of peak demands and periods of non-peak demands for a service that is offered at a predetermined price, the method comprising the steps of:*

*...providing an auction posting module for enabling one or more of the restaurants to post on the web site a listing of **at least one discounted gift certificate being offered for sale, including** restrictions comprising valid dates and times for use of the at least one discounted gift certificate, the restrictions corresponding to a non-peak demand period of a restaurant to reduce excess capacity of that restaurant during the non-peak demand period....*

At least for the reasons discussed above with respect to the auctioning of “*dining incentives*”, the proposed combination of references does not teach or suggest the sale of “*gift certificates*” for restaurants as recited in claim 133. For at least this reason the rejection of claim 133 should be withdrawn.

Claims 134 and 136-152 depend from independent claim 133. As such, the rejection of claims 134 and 136-152 should be withdrawn due to the dependency of these claims, as well as for the features that they recite individually.

*Claim 153.*

The combination of references cited in the Office Action do not teach or suggest a system configured to sell “*gift certificates*” for restaurants as recited in independent claim 153. For example, claim 153 recites *inter alia* the following features, which are

not taught or suggested by the proposed combination of references:

*A computer implemented processing system comprising a plurality of modules for providing a web site for **reducing excess capacity during non-peak demand periods for a plurality of restaurants** that experience periods of peak demands and non-peak demands for a service that is offered at a predetermined price, the system comprising:*

*...a restaurant listing module, the listing module enabling one or more restaurants to post on the web site a listing offering at least one **discounted gift certificate for sale according to a cuisine type, zip code, or geographic area parameter, including restrictions comprising valid dates and times for using the at least one discounted gift certificate, the restrictions corresponding to a non-peak demand period of a restaurant to reduce excess capacity of that restaurant during the non-peak demand period**....*

At least for the reasons discussed above with respect to the auctioning of “*dining incentives*”, the proposed combination of references does not teach or suggest a system configured to sell “*gift certificates*” for restaurants as recited in claim 153. For at least this reason the rejection of claim 153 should be withdrawn.

### **CONCLUSION**

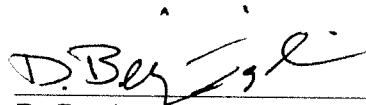
Having addressed each of the foregoing objections and rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is anticipated.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

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Respectfully submitted,

By:

  
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